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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Tanya Silva,

10 Plaintiff,

11 v.

12 Commissioner of Social Security  
13 Administration,

14 Defendant.

No. CV-24-02300-PHX-JAT

**ORDER**

15 Pending before the Court is the parties' stipulation to an award of attorneys' fees  
16 under the Equal Access to Justice Act ("EAJA"). (Doc. 14).

17 "A litigant is entitled to attorneys' fees under the EAJA if: '(1) he is the  
18 prevailing party; (2) the government fails to show that its position was  
19 substantially justified or that special circumstances make an award unjust;  
20 and (3) the requested fees and costs are reasonable.' *Carbonell v. I.N.S.*, 429  
F.3d 894, 898 (9th Cir. 2005) (citing *Perez-Arellano v. Smith*, 279 F.3d 791,  
793 (9th Cir. 2002)); *see also* 28 U.S.C. § 2412(d)(1)(A)."

21 *Michele M. v. Saul*, No. 19-CV-00272-JLB, 2020 WL 5203375, at \*1 (S.D. Cal. Sept. 1,  
22 2020).

23 Here, the parties' discussion regarding Plaintiff's entitlement to fees under the  
24 EAJA is: "This stipulation constitutes a compromise settlement of Plaintiff's request for  
25 attorney fees under the EAJA and does not constitute an admission of liability on the part  
26 of the Commissioner under the EAJA." (Doc. 14 at 2).

27 Previously, this Court remanded this case to the social security administration for  
28 further proceedings. (Doc. 12). Accordingly, the Court finds that Plaintiff is the prevailing

1 party.

2 Regarding prong two, the Ninth Circuit Court of Appeals has explained:

3 Pursuant to the EAJA, we are required to award [Plaintiff] fees and other  
4 expenses incurred in connection with his civil action unless we find that the  
5 position of the United States was “substantially justified” or that special  
6 circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A).

7 The test for determining whether the Secretary’s position was substantially  
8 justified under the EAJA is whether the position had a reasonable basis in  
9 both law and fact—that is, whether it was justified “to a degree that could  
10 satisfy a reasonable person.” *Pierce v. Underwood*, 487 U.S. 552, 565  
11 (1988); *see also Barry v. Bowen*, 825 F.2d 1324, 1330 (9th Cir. 1987). The  
12 burden is on the Secretary to prove that his position was substantially  
13 justified. *Id.*

14 *Russell v. Sullivan*, 930 F.2d 1443, 1445 (9th Cir. 1991).

15 The Government’s stipulation to pay fees, while simultaneously not admitting it  
16 owes the fees, is an ambiguous legal position. This case was remanded by stipulation of  
17 the parties (Docs. 11-13), and this Court has never evaluated either party’s positions.  
18 Nonetheless, applying the test as articulated in *Russell*, the Court finds that the Government  
19 has failed to carry its burden to prove that its position was substantially justified or that  
20 special circumstances make an award unjust. *Russell*, 930 F.2d at 1445; *see also Michele*  
21 *M.*, 2020 WL 5203375, at \*1.

22 Finally, the Court should award only reasonable fees. Here, the Court has not been  
23 provided with a billing statement. Thus, the Court does not know the rate charged or the  
24 hours expended. Nonetheless, the Court finds that the Government, by the stipulation, has  
25 conceded that the amount of fees sought in this case are reasonable.

26 Plaintiff’s counsel states in the stipulation that Plaintiff has signed an assignment of  
27 any award of fees to him. The Court has not been provided with a copy of the assignment.  
28 Nonetheless, the Court will accept Plaintiff’s counsel’s representation that such an  
assignment is available in his records for review if this representation is ever disputed.

Based on the foregoing,

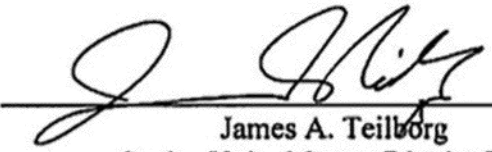
**IT IS ORDERED** granting the stipulation (Doc. 14) such that fees and expenses in  
the amount of \$1,150.00 as authorized by 28 U.S.C. § 2412, and costs in the amount of \$0

1 as authorized by 28 U.S.C. § 1920, are awarded to Plaintiff subject to the terms of the  
2 Stipulation.

3 **IT IS FURTHER ORDERED** that if, after receiving this Order, the Commissioner:  
4 (1) determines that Plaintiff does not owe a debt that is subject to offset under the Treasury  
5 Offset Program, and (2) agrees to waive the requirements of the Anti-Assignment Act, then  
6 the check for the fees awarded herein will be made payable to Plaintiff's attorney pursuant  
7 to the assignment executed by Plaintiff. However, if there is a debt owed under the  
8 Treasury Offset Program, the Commissioner cannot agree to waive the requirements of the  
9 Anti-Assignment Act, and any remaining Equal Access to Justice Act fees after offset will  
10 be paid by a check made out to Plaintiff but delivered to Plaintiff's attorney.<sup>1</sup>

11 Dated this 13th day of January, 2025.

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James A. Teilborg  
Senior United States District Judge

<sup>1</sup> This award is without prejudice to Plaintiff seeking attorneys' fees under section 206(b) of the Social Security Act, 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA.